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1 JOHN R. ROBERTS
2 Bankruptcy Trustee
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7 UNITED STATES BANKRUPTCY COURT
8 FOR THE EASTERN DISTRICT OF CALIFORNIA

9 IN RE: CASE NO. **12-35401-C-7**

10 **JAIMES DAVID MCLAUGHLIN**
11 **KIMBERLY JANE MCLAUGHLIN**
12 **AKA Kimberly Sherak**

13 DC NO. **JRR-1**

14 Debtor(s).
15 _____/

14 DATE: **JUNE 4, 2013**
15 TIME: **9:30 A.M.**
16 COURTROOM: **35**

17 **TRUSTEE'S MOTION FOR SALE OF REAL PROPERTY**
18 **11 U.S.C. § 363(b)**

19 The Motion of JOHN R. ROBERTS, as Trustee of the estate of the above-named
20 debtor, respectfully represents:

21 1. That movant is the duly elected, qualified and acting Trustee of the estate
22 of the above-named debtor(s).

23 2. That movant has, as such Trustee, possession of the following asset
24 belonging to the debtor(s)' estate:

25 **Single Family Residence commonly known as**
26 **1152 Fleming Drive, Roseville, CA 95678**
27 **APN: 477-660-013-0000**
28 Hereinafter "Property"

3. The Trustee has received an offer from Mark Haney, no relationship to the
debtor, to buy the Property for the sum of \$235,000.00, cash as evidenced by the

1 Residential Purchase Agreement and Joint Escrow Instructions attached to the Exhibits
2 and marked as **Exhibit "A"**.

3 4. That it is in the best interest of the estate that said Property be sold in that
4 it will generate cash for the estate and said sale is for the fair market value. Given that
5 the sale is subject to overbids, it is anticipated that the Trustee will receive the best and
6 highest value for the Property and therefore the proposed sale price of the Property is
7 fair and reasonable. If the Sale Motion is not approved, the Estate will lose all potential
8 benefit from the Property because this is a short sale and there is no available equity in
9 the Property, and the agreed upon buyer's premium fee of at least \$15,000.00 for the
10 benefit of the Estate will be lost.

11 5. The Trustee believes that it would be in the best interest of the Estate and
12 its creditors to sell the Property. The benefits to the Estate, as set forth above, are
13 tremendous due to the funds to be generated from the sale that are anticipated to pay a
14 meaningful distribution to the timely filed unsecured creditor claims. If the Sale Motion
15 is not approved, the Estate will not receive the sale proceeds and will likely lose the
16 Mark Haney Offer. The Trustee does not want to lose this beneficial business
17 opportunity. Thus, the Trustee has made a business decision that it is in the best
18 interest of the creditors of the Estate that this Sale Motion be approved.

19 6. An escrow has been opened at FIDELITY NATIONAL TITLE COMPANY,
20 escrow number 6081300260-BMC and a \$25,000.00 deposit has been placed with said
21 title company.

22 7. Liens recorded against the property will be paid in an amount agreed upon
23 by the lien holders. Lien holders will provide FIDELITY NATIONAL TITLE COMPANY
24 with a Satisfaction of Lien that will be recorded through the escrow. Trustee has
25 reviewed the Preliminary Title Report and has accounted for all recorded liens. A copy
26 of the Preliminary Title Report is attached to the Exhibits and marked as **Exhibit "B"**.

27 8. Bank of America, N.A., Successor by Merger to BAC Homes Loans
28 Servicing, LP Fka Countrywide Home Loans Servicing, LP, as Successor for Mortgage

1 Electronic Registration Systems Inc., solely as nominee for Vitek Real Estate Industries
2 Group, Inc. dba Vitek Mortgage Group, a California Corporation holds a first deed of
3 trust on the Property and Trustee is proposing to pay the sum of \$218,907.43 in full
4 satisfaction of the obligation.

5 9. Real property taxes and utility liens to the County of Placer will be paid in
6 full.

7 10. SDREOS aka San Diego Realty, Inc. has been employed by this Court to
8 list, market and short sell the Property pursuant to the Court's Order, a copy of which is
9 attached to the Exhibits and marked as **Exhibit "C"**. The listing agreement called for
10 real estate commission to be paid in the sum of six percent (6%) of the sales price, plus
11 a one percent (1%) short sale negotiation fee.

12 11. Trustee seeks authorization to pay real estate commissions in the amount
13 of five percent (5%) of the purchase price and a one percent (1%) short sale negotiation
14 fee. Through escrow on the sale of the Property, and subject to Bankruptcy Court
15 approval, the Trustee shall pay commissions as follows: SDREOS aka San Diego
16 Realty, Inc. \$5,875.00, Keller Williams Realty \$5,875.00, Wingspan Portfolio Advisors
17 \$2,350.00.

18 12. The usual and customary escrow and title fees will be paid. The
19 bankruptcy estate will receive a net buyer's premium amount of \$15,000.00 from the
20 sale. A copy of the estimated closing statement is attached to the exhibits and marked
21 as **Exhibit "D"**.

22 13. The Property is being sold on an "AS IS" basis without warranties of any
23 kind, expressed or implied, being given by the Seller, concerning the condition of the
24 Property or the quality of the title thereto, or any other matters relating to the Property.

25 14. Buyer is a good faith purchaser pursuant to Bankruptcy Code Section
26 363(m).

27 15. The fourteen (14) day stay period of the order approving the sale of the
28 Property under Federal Rules of Bankruptcy Procedure 6004(h) is requested to be

1 waived.

2 **WHEREFORE**, based upon the foregoing, the Trustee respectfully submits that
3 good cause exists for granting the Sale Motion and requests that the Court enter an
4 order as follows:

5 1. Authorizing the Trustee to sell the Property to the Buyer (or Successful
6 Bidder) pursuant to the terms and conditions as set forth in the Residential Purchase
7 Agreement and Joint Escrow Instructions attached to the Exhibits and marked as
8 **Exhibit "A"**.

9 2. Authorizing the Trustee to sign any and all documents convenient and
10 necessary in pursuit of the sale as set forth above, including but not limited to any and
11 all conveyances contemplated by the sale.

12 3. Approving the payment of the real estate commissions and short sale
13 negotiation fee in the total amount not to exceed 6% of the purchase price and all other
14 costs associated with the sale.

15 4. A determination by the Court that the Buyer or Successful Bidder is a
16 good faith purchaser pursuant to Bankruptcy Code Section 363(m).

17 5. Waiving the fourteen day stay of the order approving the sale of the
18 Property under Federal Rules of Bankruptcy Procedure 6004(h).

19 6. For such other and further relief as the Court deems just and proper under
20 the circumstances of this case.

21
22 DATED: May 7, 2013

23 /s/ JOHN R. ROBERTS, TRUSTEE
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